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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
TRANSFER PETITION (CIVIL) NO. 47 – 48 OF 2013

VICKRAM CRISHNA & ORS.

PETITIONERS

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

COUNTER AFFIDAVIT ON BEHALF OF THE
RESPONDENT

I, Ashish Kumar S/o Shri U. Kumar aged, 49, R/o C-II/2178, Vasant Kunj, New Delhi-110070 do hereby solemnly affirm and declare on oath as under:

1. That I am working as Assistant Director General of Unique Identification Authority of India and therefore, have been authorized to swear this affidavit. It is stated that, I am well conversant with the facts of the matter as derived from official records and, therefore, competent to sign and swear the present affidavit.

That at the outset, the answering deponent denies each and every contention, allegation and averment made in the present petition unless specifically admitted herein below. The averments of the petition which are not specifically dealt herein below should be deemed to have

been denied. It is respectfully submitted that the instant reply is being filed by the answering deponent without prejudice to his right to file a fuller and more detailed reply at a later stage, if so necessary.

PRELIMINARY OBJECTIONS

The deponent has been advised to state that the above titled Writ Petition is not maintainable, *inter-alia*, for the following reasons:

- A. That the contents stated in the present PIL is misconceived and have been made in ignorance of the well-established principle of Constitutional law and the law laid down by the Hon'ble Court Supreme Court and this Hon'ble Court in a number of judgments as well as law for the time being in force, and hence the same is not maintainable in the eyes of law.
- B. That the present Petition in the guise of the Public Interest Litigation is without any bonafide basis and therefore, the contents and averments stated in the present Petition are denied unless specifically admitted by the answering deponent.
- C. That the present PIL neither raises any question of law pertaining to the Constitution of India which needs interpretation of this Hon'ble Court nor substantiates as to

how the issuance of a random 12 Digit Aadhaar Number by the Unique Identification Authority of India, to the residents of India on a voluntary basis amounts to an invasion of the Right to Privacy guaranteed under Article 21 of the Constitution of India.

Therefore, the present PIL fails to disclose the infringement of the Fundamental Right enshrined under Part III of the Constitution of India and hence is not maintainable under Article 32 of the Constitution of India and therefore, fit to be dismissed with exemplary cost.

D. That the petitioner has failed to appreciate the finer nuances of law as the petition is full of contradictions, inadequate research and based on conjectures and hyperbole statements.

E. That the petitioner without understanding the nature, manner, scope, and procedure involved in UID system and the resultant benefits which would accrue to the beneficiaries of various socialwelfare schemes, is seeking intervention of this Hon'ble Court to declare implementation of UID scheme in its present form as violative of the fundamental rights of citizens and hence illegal and unconstitutional.

PRELIMINARY SUBMISSIONS

F. That the Present PIL Petition filed by the Petitioner is contrary to the well-established principles of law laid down by the Hon'ble Supreme Court and this Hon'ble Court in a catena of the judgment/s with regard to the question raised in the instant petition, and therefore, the respondent craves leave of this Hon'ble Court to deal with the same in the backdrop of the background/history of the issuance of the Aadhaar Number/s by the Unique Identification Authority of India (UIDAI).

BACKGROUND OF AADHAR SCHEME

The Aadhaar scheme is the unique identification project launched by the Government of India and is being implemented by the Unique Identification Authority of India (UIDAI). A copy of the notification dated 28.01.2009, through which the UIDAI was set up is annexed herewith as

ANNEXURE-R/1. [Page No. 107 to 109] It is submitted that,

Aadhaar is a randomly generated 12-digit unique number which the UIDAI issues to all residents in India on a voluntary basis. The number will be stored in a secure database and linked to the basic demographics and biometric information – photograph, ten fingerprints and iris – of each individual. It is verifiable in an online, cost-effective way. It is unique and robust enough to eliminate the large number of duplicate and fake identities in Government and

private databases. The random number generated is devoid of any classification based on caste, creed, religion and geography. Further, to ensure uniqueness of the individual, it has been made essential that the bio-metrics captured are as per the specifications laid down by the Bio-metrics Standards Committee.

The UIDAI is collecting bare minimum demographic information from the residents such as name, age, gender, address and relationship details in case of minors, photograph alongwith biometric information of ten fingerprints and iris for issue of unique identity number. This is commonly known as "Know your Resident (KYR)." A copy of the Aadhaar enrollment form is annexed herewith as **ANNEXURE-R/2**. [Page No. 10 to 11]

A resident who seeks to obtain an Aadhaar number shall provide his/her demographic and biometric information to enrolling agencies appointed and nominated by Registrars using security verification processes prescribed by UIDAI as this will ensure that the data collected is clean right from the beginning of the programme. A resident who does not possess any documentary proof of identity or proof of address can obtain an Aadhaar number by being introduced by a duly notified introducer. The UIDAI has executed Memoranda of Understanding (MoU) with the partners

including all the States Government and Union Territories, financial institutions and selected PSUs etc. to act as Registrars for implementing the scheme. The Registrar General of India (RGI), the authority under the Ministry of Home Affairs conducting the exercise under the National Population Register (NPR) is an important partner registrar in the enrollment process. A copy of the list of registrars partnering with UIDAI is annexed herewith as **ANNEXURE-R/3..[Page No 12 to 14]**

UIDAI to ensure that the Know Your Resident (KYR) standards do not become a barrier for enrolling the poor, has devised suitable procedures to ensure their inclusion without compromising the integrity of the data.

The UID scheme is envisaged as a means to enhance the delivery of welfare benefits and services. Before the advent of UID Scheme there has been no single document which was uniformly acceptable as proof of identity across India – irrespective of age, gender and familial connections. Thus establishing identity has always been a challenge for the poor, particularly when they move from place to place, as a consequence lack of proof of identity makes it difficult for the poor to access benefits and services and hence enrolling for UID Scheme Aadhaar number may be the first form of identification they will have access to.

Aadhaar – Pro-poor Approach

An important public policy imperative for introduction of Aadhaar was the understanding of the Government that a very large number of residents, primarily the poorest are not able to access services and benefits intended for them for want of being able to prove their identity to service providers and agencies that dispense them. It is well known that provisions of law notwithstanding the birth of close to half the population in many States are not registered. A large percentage of people do not have a birth certificate, the primary document used to prove identity and citizenship.

An inclusive design for enrolment into Aadhaar was therefore deliberately adopted by the Government of India. It was decided that Aadhaar will prove identity and not citizenship given the difficulty the vast majority, particularly the poor, would have in proving their citizenship credentials in the absence of birth certificate or passport. Based upon the recommendations of an expert Committee as contained in its report, "Demographic Data Standards and Verification Procedure Committee Report" dated 09.12.2009, the Government adopted the suggested process of verifications to be followed for enrolment of residents into the Aadhaar system. Accordingly, three distinct methods of verification for obtaining Aadhaar have been adopted:

- Based on supporting documents
- Based on Introducer system

- Based on National Population Register process of public scrutiny.

Each of these methods is well considered, provides for robust verification following a due process and leaves a permanent trail, electronically captured, detailing the entry of each and every individual into the system.

Enrolment of residents with proper verification is a key concern of the UIDAI and for this purpose it ensures proper verification of their demographic and biometric information. As a part of its pro-poor approach the UIDAI focuses on enrolling India's poor and under privileged community for many of whom Aadhaar may be the first form of identification but no one gets enrolled for Aadhaar without undergoing the prescribed method of verification.

Aadhaar – An Enabler

It is submitted that Aadhaar number is an enabler. The benefits of Aadhaar number are:—

For residents: The aadhaar number will become the single source of identity verification. Once residents enroll, they can use the number multiple times – they would be spared the hassle of repeatedly providing supporting identity documents each time they wish to access services such as obtaining a bank account, passport, driving license, and so on. The number will also give migrants mobility of identity.

For Registrars and enrollers: The UIDAI will only enroll residents after de-duplicating records. This will help Registrars clean out duplicates from their databases, enabling significant efficiencies and cost savings. For Registrars focused on cost, the UIDAI's verification processes will ensure lower Know Your Resident (KYR) costs. For Registrars focused on social goals, a reliable identification number will enable them to broaden their reach into groups that till now, have been difficult to authenticate.

The strong authentication that the Aadhaar number offers will improve services, leading to better resident satisfaction.

For Governments: Eliminating duplication under various schemes is expected to save the Government exchequer a substantial amount. It will also provide Governments with accurate data on residents, enable direct benefit programs, and allow Government departments to coordinate investments and share information.

With Aadhaar number integration in various Government schemes, the identity of the beneficiary gets established, by which it is ensured that the government scheme benefits reach the intended beneficiaries. Availability of identity and eligibility information together provides an important tool to plug the loopholes in the eligibility determination process, and in managing the eligibility life cycle for a beneficiary.



The use of Aadhaar in being initiated gradually for selected government programmes in districts which have a high coverage of Aadhaar and exception management system has been put in place to ensure that there is no denial of services for want of Aadhaar. Special arrangements have also been put in place for beneficiary of government programmes to obtain Aadhaar expeditiously without difficulty. This is consistent with the stated policy of government to use Aadhaar for inclusion of the poor and marginal section of society into the fold of social security programme.

It is further submitted that UIDAI has developed a robust monitoring and evaluation framework which provides a comprehensive mechanism for continuously monitoring and evaluating the UIDAI programme. Using information technology end to end security is maintained from the time data is collected by an Enrolling Agency until it is safely stored in the UIDAI Data centre. Presently, UIDAI undertakes following audits on a periodic basis: (i) Enrolment Client Audit; (ii) Enrolment Process (Field) Audits; (iii) ASDMSA Application Audits; (iv) Authentication User Agency Audits; (v) Data Center Audits; (vi) Security Audits; (vii) Impact Assessment (Grants in Aid for Research); and (viii) Other Third Party Audit Services.

Apart from these listed above, there are numerous other quality monitoring systems that have been put in place

which are leveraging the information technology which is used in the Aadhaar programme. These include sampling of enrolment based on the track record and past performance of their enrolments work, Field Monitors that undertake surprise checks of enrolment centres, coaches for training of the field enrolment staff, undertake constant analytics of the work based on the meta-data that IT enables. All these enables UIDAI to monitor and keep a close watch on enrolments being undertaken at the field level.

It is humbly prayed that the UID project is a complex technology project designed to support e-governance in the country. The implementation of the project itself as well as its usages by other agencies ensures process re-engineering on a substantial scale. In particular manual process and manual database need to be replaced by electronic process and electronic data bases. Supporting administrative arrangements for programme implementation also need to be recast to reap the full benefits of efficiency, transparency, accountability and economy of the resultant e-governance. Nowhere in the world has such a large biometric enabled e-governance initiative been taken database of a billion people being maintained. The technical architecture of the UID scheme has been structured to ensure clear data verification, authentication and de-duplication, while ensuring a high level of privacy and information security.

First time implemented

27/2/17

The Aadhaar scheme is the largest scheme in the world seeking to provide a unique identification number to more than one billion residents of India. As on 31st December 2013, more than 64.32 Crore residents have enrolled for Aadhaar and an amount of Rupees Three Thousand eight hundred and four Crore (Rs. 3,804 crore) has been incurred on the programme by the Central Government. The following Central governments and related State governments as well as the public sector agencies have commenced use of Aadhaar as identity infrastructure and its application in their scheme of things:

Central Government Ministries using Aadhaar based Identity systems:

1. Ministry of Petroleum and Natural Gas
2. Ministry of Social Justice and Empowerment
3. Ministry of Human Resources (Department of Higher Education)
4. Ministry of Human Resources (Department of School Education and Literacy)
5. Department of Tribal Affairs
6. Department of Minority Affairs
7. Ministry of Women and Child Development
8. Ministry of Health and Family Welfare
9. Ministry of Labour and Employment

State Governments Involvement and Usage of Aadhaar based Identity System

1. Andhra Pradesh
2. Chandigarh
3. Delhi
4. Haryana
5. Jharkhand
6. Karnataka
7. Madhya Pradesh
8. Maharashtra
9. Puducherry
10. Punjab
11. Rajasthan
12. Himachal Pradesh

These Ministries/Department have 28 beneficiary programmes using Aadhaar based Identity systems. Some other achievements are as follows:

- a) 139 banks which have had Aadhaar beneficiary transactions. Details of these banks arranged in alphabetical order is annexed and marked as **Annexure R/4..[Page No!to 18]**

b) 121 banks are currently live on Aadhaar Payment Bridge (APB).

c) More than 19.8 lakh people have received their MGNREGS wages/ pensions using Aadhaar online authentication services in December 2013 alone. This system is being used by India Post and banks.

d) As on date, 4.8 crore people have bank accounts linked to Aadhaar thus making them ready to receive any subsidy/ welfare payment by the Government.

Some instance where benefits of use of Aadhaar in terms of plugging leakages, elimination of ghost and duplicate beneficiaries etc. have been summarised and annexed herewith as ANNEXURE-R/5 [Page No. 119 to 121]

Aadhaar – A Tool for Empowerment

A The introduction of Aadhaar needs to be seen in the same vein and as a part of the continuing quest of the Government to improve efficient and transparent delivery of public services.

However, for providing social security benefits and subsidies which are discretionary in nature there cannot be any lawful objection for the Government to insist on the use of Aadhaar to ensure the benefits reach only the entitled persons as also to plug wasteful and fraudulent leakages.

B. Aadhaar has been designed specifically to assist in meeting these ends. The Government of India recognizes it as a strategic policy tool for social inclusion, public sector delivery reform and for managing the fiscal deficit. The importance and utility of Aadhaar for delivery of public services has also been recognized by this Hon'ble Court in WP(C) No.196/2001, *PUCL Vs. Union of India* vide order dated ✓14.09.2011 as well its judgement as in Civil Appeal No.958/2013, State of Kerala & Others Vs. President, Parents Teachers Association, SNVUP and Others Copies of these judgments are annexed herewith as **Annexure R/ 6 (Colly)**..^[Page No!22to!53]

C. The Aadhaar scheme is primarily a developmental initiative and its design features, enumerated above, have been arrived at with the express purpose of improving delivery of social security benefits and subsidies, plugging leakages and wastes, eliminating fakes and duplicates and enhancing transparency and accountability

D The scheme has the approval of the Union Cabinet and its funding requirements are being met year after year with the approval of the Parliament under the Appropriation Act. The application of Aadhaar to the social security benefit programmes of the Government is clearly in the larger public interest. The utility of the scheme would be substantially diluted if alternate modes of identity proof are allowed to proliferate, as none of the other identity system has the ability

to de-duplicate the identity being offered by the resident. Only the UIDAI using biometric technology is able to ensure that no one gets more than one Aadhaar number a miniscule error margin aside.

E. That it is submitted that the UID Scheme when it was introduced in September 2010 meant to provide identification for each resident and facilitate efficient delivery of services under various schemes. This should be seen as electronic governance (e-Governance) measure to provide effective and efficient Government -to- Citizen (G2C) and Government-to-Government (G2G) interface. In this context, it is significant to note that the Information Technology Act (IT Act, 2000) and the Rules made there under have granted legal sanctity to e-Governance framework by recognising use of electronic records and electronic signatures. It has also recognised the role of service providers for efficient delivery of services.

F. That it is submitted that UID system acts as a facilitator as it facilitates end-to-end computerisation resulting in identification of an individual in the form of a random 12 digit unique number. Harnessing this 12 digit number for various social welfare schemes is further application for bringing in efficiency in delivery of services for which the State cannot be faulted as the objective and the scope behind every

".....the technologies that measure and analyse human body characteristics, such as 'fingerprints', 'eye retinas and irises', 'voice patterns', 'facial patterns', 'hand measurements' and 'DNA' for authentication purposes."] A copy of Rules are annexed herewith and marked as **Annexure R/7** [Page No. 154 to 156]

K. That it is prayed that the right to privacy is not an absolute right. This Hon'ble Court in catena of judgments has opined, including in *Sharda v. Dharampal*, (2003) 4 SCC 493, held that the right to privacy in terms of Article 21 of the Constitution is not an absolute right. Again in *Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women*, AIR 2010 SC 2851, this Hon'ble Court has held that there is no violation of the right to life, or privacy of a person, in directing a DNA test to be undergone by him - to undergo such test is not an invasion of his right to life. Similarly, the Bombay High Court in *Radiological and Imaging Association v Union of India* [2011 (113) BomLR 3107] has held that ".....

".....the entire petition is based on the premise that the information stored in the silent observer which contains the images of ultra sonography on all patients will be transmitted on-line and will be available in public domain and thereby would violate the privacy rights of the patients undergoing ultra sonography. The entire premise

and the apprehension based thereon is without any basis."

It has further held that right to privacy is not absolute and is subject to restrictions on the grounds of public interest. It also held that there are enough procedural safeguards to protect the privacy of the patients. In the context of this petition, it is submitted that if for the purpose of 'public good', personal and sensitive personal information of a beneficiary not only being sought by UID but it is further linked to other State social welfare benefits in a fair, just and reasonable manner and for lawful purpose with adequate safeguards, then the Right to Privacy cannot said to be said to be violated as enshrined under Article 21 of the Constitution.

L. That the petitioners have themselves admitted in para 9 [Facts in brief constituting the case] that the "eventual aim of the aadhaar numbers scheme is to streamline the delivery of services to Indian residents and avoid corruption and misuse of public funds and subsidies". The answering respondent submits that the petitioners' themselves approves of the vision behind issuance of Aadhaar numbers, which is in public good.

M. That the answering respondent submits that Aadhaar linked benefits should be seen in the context of the various

legislative initiatives, which have already been taken by the Central Government and various State Governments in the form of Electronic Service Delivery (ESD). The objective behind the ESD is to :

N. *".....to provide for electronic delivery of public services by the Government to all persons to ensure transparency, efficiency, accountability, accessibility and reliability in delivery of such services..."*

It is submitted that the following statutory measures both at the Central & State level in this respect are already in place:

(a) Government has already introduced in the Parliament:

(i) The Electronic Delivery of Services Bill, 2012 and

(ii) The Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011 [Citizen Charter Bill],

(b) The Information Technology (Electronic Services Delivery Rules), 2011 [came into force on April 13, 2011], and

(c) Various States, like Andhra Pradesh, Chhattisgarh, Delhi, Karnataka, Maharashtra, Manipur etc have already notified their respective Electronic Service Delivery Rules for the purposes of electronic governance (e-Governance).

2. That the contents of Para 2 are misleading and hence disputed and denied to the extent that issue of UID cards (Aadhaar number) must be contingent upon the legislative passage of the propose NIDAI Bill, 2010. It submitted that the Union Government has recently approved a legislative framework to move Official amendments to the NIDAI Bill 2010. The UIDAI has framed detailed policy and guidelines for implementation of the programme across the country. It has also carried out pilot projects to ascertain robustness of the project and associated technology. The Standing Committee of the Parliament only urged the Government to reconsider and review the UID scheme as also the proposal contained in the Bill which has been done by the Government for bringing forth an appropriate legislation before the Parliament.

3. The contents of Para 3 are misleading and hence, disputed and denied. The UIDAI follows high level of safeguards to protect privacy. Collection of personal information including the biometric data by it, cannot be considered violation of privacy. The scheme remains optional and different Government agencies and State Governments are using it due to its unique ability to identify their beneficiaries, weed out fake and duplicate entries and bring about efficiency, transparency and high level of audit in the delivery of services.

That it is further submitted that State Governments are creating respective 'Due Diligence Framework of UID Projects' to provide additional layers of privacy, data protection and cyber security to resident information.

O. That it is submitted that the resident data, including the biometric information is stored in the servers located in India only. Further, UID system works on both proprietary and Free and Open Source Software (FOSS). It even engages companies to develop software for its specific requirements using FOSS platform(s). It is humbly submitted that software should not be stopped from being used because it is being used elsewhere in the world. If this has been so, then the Government of India could not use Oracle, IBM DB2, MySQL, Hadoop, Hive or any other proprietary or FOSS programmes. In this context, it is further submitted that for example, Security Enhanced Linux or SELinux was developed as FOSS project in the U.S. and is currently being used by many departments of the Government of India, including the judiciary in the form of Red Hat Enterprise Linux.

PARAWISE REPLY:

1. That the contents of Para 1 of this PIL Petition are mischievous and hence disputed and denied. The petitioners' have failed to provide any legal justification to dispute the creation of UIDAI vide Notification dated 29th January 2009.

I. PARTICULARS OF THE PETITIONERS

1. That the contents of Para 1 are misleading and hence disputed and denied. It is submitted that the Petitioner has failed to comprehend and appreciate the advantage of a random 12 digit Aadhaar number to the poor and underprivileged section of the society. It is humbly prayed that the UID project is a complex technology project. The technical architecture of the UID scheme has been structured to ensure clear data verification, authentication and de-duplication, while ensuring a high level of privacy and information security.

2. Further, as regard the experience of the petitioner no.1, it is denied for want of knowledge.2. That as regard to expertise and experience of petitioner no.2, as mentioned in para 2, it is denied for want of knowledge

3. That as regard to expertise and experience of petitioner no.3, as mentioned in para 3, it is denied for want of knowledge.

4. That as regard to expertise and experience of petitioner no.4, as mentioned in para 4, it is denied for want of knowledge.

5. That as regard to expertise and experience of petitioner no.5, as mentioned in para 5, it is denied for want of knowledge.

6. That contents of para 6 are matter of record.

7. That the contents of para 7 are misconceived, misleading and hence denied. It is submitted that the petitioners' are trying to mislead this Hon'ble court by selectively picking up administrative differences between/among the various departments of the Government. It is humbly submitted that such administrative concerns/differences are bound to happen in a project of this nature involving various ministries and departments of the Government of India. The Project has the approval of the Union Government and approved after obtaining views of various ministries. This included ministries like Ministry of Home Affairs, Ministry of Finance etc.

In this regard, it is pointed out that MOF have issued orders that all Expenditure Finance Committee Memoranda are required to indicate how beneficiary-oriented projects/schemes are using the Aadhaar numbers for identifying beneficiaries and for delivery of services. Moreover, the Task Force set up in 2011 by the MOF for direct transfer of subsidies on kerosene, LPG, fertilizers and food to the beneficiaries including recommending a solution

for Aadhaar-enabled payments infrastructure, recognizes the need and potential of Aadhaar numbers to replace/clean up information which is being collected, or is already available, with various agencies. As regards "difference of opinion" with the Ministry of Home Affairs, it is submitted that the issues, especially those relating to overlap between NPR and UIDAI, have since been resolved by the Government.

II. DECLARATIONS AND UNDERTAKING OF PETITIONERS

1. That the contents of para 1 are misleading, frivolous and hence denied. It is denied that this petition is being filed in bonafide public interest.
2. That the contents of para 2 are denied for want of knowledge.
3. That the contents of para 3 are frivolous, misleading and hence denied. It is submitted that this petition does not reflect any significant and purposeful research on the part of the petitioners'.

4 That the contents of para 4 are denied for want of knowledge.

5. That the contents of para 5 do not concern the respondent hence no comments are offered.

6. The contents of Para 6 are misconceived and hence, denied. It is submitted that budget of the UIDAI is approved by the Parliament every year under the Appropriations Act. The performance of the UIDAI is also discussed in the Parliament like any other programme of the Government and as such Aadhaar undergoes full parliamentary scrutiny. ✓

7. That the contents of para 7 are misconceived, frivolous and hence denied. The letter as referred by the petitioners' purportedly written by prominent writers, lawyers, historians provides no substantive argument. Without understanding the UID project - its architecture, technology, scope and extent, numerous issues have been raised without any cogent analysis.

Aadhaar is a Proof of Identity (PoI) and Proof of Address (PoA) which can be used by individuals to establish their identity wherever required. Aadhaar is a generic identity document and its application to different Government and non-Government programmes is left to the user agencies. Like any other identity programme the utility of Aadhaar will vary from programme to programme as well as the manner

in which it is sought to be utilized. The feasibility of using Aadhaar for PDS and MGNREGA has been supported by studies, Court decisions as well as by application on the ground. The cost benefit analysis of the programme has shown an Internal Rate of Return in real terms of 52.85% to the Government. The estimated project cost of Rs.45,000 crores quoted by the Petitioners is baseless. The architecture of the programme deals with issues like data theft comprehensively. All firms and agencies have been engaged by the project following prescribed procurement procedure of the Government of India. The programme has been designed to preclude profiling and tracking of individuals and to protect privacy. By design and purpose the UIDAI programme is very different from UK, USA and Australia. It is also relatively inexpensive. Given that the project is not wanting in terms of feasibility study or cost benefits analysis as also the fact that all information about it is in the public domain there is no reason to halt its implementation.

III. ISSUES

That the issues mentioned in paras (i) – (x) are misleading, baseless and hence denied. Para-wise comments are as follows:

1. Para (i). That in response to para (i), it is submitted that mere observation of the Standing Committee of the

Parliament on NIDAI Bill, 2010 does not tantamount to cessation of UID project. It submitted that the Union Government has recently approved a legislative framework to move Official amendments to NIDAI Bill 2010

2. Para (ii) That in response to para (ii), it is submitted that Aadhaar Number to the residents, on a voluntary basis, does not in any manner amount to an infringement of Fundamental Rights guaranteed to the Subject/s under Part III of the Constitution of India. The Consent of the individual is a sine qua non before issuing a Aadhaar Number as well as for every further usage and therefore it is a voluntary project with the object to promote inclusion and benefit to the marginalized sections of society who have no formal proof of identity vis-à-vis the State and hence experience difficulties in accessing various welfare schemes that are implemented by the Government of India and State Governments.
3. Para (iii). That in response to para (iii), it is submitted that the technical architecture of the UID scheme has been structured to ensure clear data verification, authentication and de-duplication, while ensuring a high level of privacy and information security. It is further submitted that the petitioners' have failed to articulate that how the issuance of the a random 12 Digit Aadhaar Number by the Unique

Identification Authority of India, to the residents of India on a voluntary basis amounts to an invasion of the Right to Privacy guaranteed to the subject/s under Article 21 of the Constitution of India.

4. Para (iv). it is submitted that that UID system facilitates end-to-end computerisation resulting in identification of an individual in the form of a random 12 digit unique number. Harnessing this 12 digit number for various social welfare schemes is the next logical and natural step and for which the State cannot be faulted as the objective and the scope behind every social welfare scheme is to make such scheme(s) more effective and efficient and to reach maximum number of people. The UIDAI collects minimal data to establish the unique identity of an individual which is of immense use both for the individual concerned as well as for Government and non-Government service providers. A provision of welfare services ordinarily entails identification and authentication of beneficiaries and Aadhaar fulfils these purposes using the personal data collected from each resident.

5. Para (v). That in response to para (v), it is submitted that the very nature of Aadhaar, and its basic features which are designed innovatively leading to no duplication, proof at point of presence making sure that only the genuine beneficiary gets the benefit, no fakes as this cannot be

obtained by non-existent individuals pre-suppose the use of biometrics as 'unique to each individual'. It is further submitted that the UIDAI biometric system design has followed global best practices. In designing UIDAI's biometric system, UIDAI reviewed existing state-of-the-art biometric systems, consulted with the world's top biometric experts, conducted a proof of concept study and built biometric system that is currently considered to be world's best. UIDAI has also regularly measured and published empirical and verifiable results. The biometric data being used by the UIDAI is able to uniquely identify individuals to the extent of 99.95% and therefore, it fully serves the objectives of the non-duplication in a rational manner. The collection of minimal biometric data and fully secure end to end encryption as well as logical partitioning, firewalling and anonymisation of decrypted biometric data protects the privacy of individuals as also tampering of biometric information.

6. Para (vi). That in response to para (vi), it is submitted that the advantages of Aadhaar will be lost if there were to be no use of biometrics. It is also submitted that in order to identify any individual out of a pool of millions and millions of individuals, one requires unique parameters, which would set that individual apart. These parameters could be a combination of both 'personal' and 'sensitive personal information or data'. An individual cannot be



- b. They must provide a justification to the resident for the collection and use of this data, and
- c. They must obtain a clear consent from the resident for the collection and use of this data
- d. Basic privacy principles are met by ensuring that:
 - i. Notice Residents: At the time of enrolment, the resident is aware of enrolling to get an ID and address proof.
 - ii. Choice and Consent: Explicit consent of resident is sought to share data for availing welfare services, enrolment itself is voluntary, use of aadhaar is always consent driven and all data is encrypted at source, biometrics are anonymised even for de-duplication purpose .
 - iii. Data Collection: Minimal information collected and that too only with the consent of the resident
 - iv. Purpose Limitation: Data collected only for issue of Identity and Address Proof, explicit consent sought for any other use, resident can withdraw consent, data shared only with resident consent and retained data is encrypted and secure
 - v. Access and Corrections: The Resident has/will have access to his authentication records and the Self Service Updation Portal and permanent Enrolment Centres provides the Resident with an opportunity to update his information. This will include choice to the Resident to review the consent he had provided earlier

- vi. Disclosure of Information: UIDAI never discloses resident data except with explicit consent of the resident, entities with whom data is shared with resident consent are required to maintain security standards and disclosure to law enforcement is only in accordance with law.
- vii. Security: The UIDAI has implemented state of the art and strict data security architecture and processes to ensure security and confidentiality of resident data.
- viii. Opensness: Simple and transparent enrolment process, full visibility of data recorded to the resident at the time of enrolment
- ix. Accountability: The IT Act provides for an accountability framework which will be strengthened by the proposed NIDAI Bill

It is further submitted that vendors have controlled access to the data and no database contains complete data (it is partitioned into multiple databases and zones for further protection). Raw biometric data is never stored unencrypted anywhere even within the data centres. Aadhaar system has used best in class encryption and security mechanisms to ensure resident data and biometrics cannot be tampered with or stolen and even if stolen they cannot be decrypted. There are detailed security measures adopted for the end to end life cycle of Aadhaar enrolments and these are detailed below:

During Enrolments :

1. The enrolment can be done only on Registered machines and by the registered Enrolment agencies
2. The enrolments can be accepted by the machine only if the operator and supervisors are recognised by their fingerprint sign-off after the end of every enrolment
3. The data is encrypted immediately after every enrolment.

During Transmission:

1. The resident packets travel in encrypted form.
2. The information of each enrolment is exchanged between registrars and UIDAI data centre over a network and follows a Secure File Transfer Protocol.
3. The encrypted packets can be decrypted only at UIDAI data centre (Central Identities Data repository or CIDR)

At Storage Stage:

1. The Central Server and Disaster management Site has storage ability to prevent any accidental loss of data
2. Adequate Physical and Network Security to ensure that the software systems that deal with this data do not connect to system outside of the CIDR.

3. Data Partitioning into separate database with different ownership for management and access controls
4. Resident's Biometrics shared in an anonymized manner with Biometric Service Providers for de-duplication
5. Data shared with printers for letter printing is also encrypted
6. Data is shared with State Registrars in encrypted form only with explicit consent of the resident
7. Within UIDAI access is provided to authorized personnel using login credentials

During Authentication:

1. Authentication of the residents will be online and on consent from the resident based on them providing an electronic signature by way of biometric sign-in
2. Ecosystem partners with appropriate liability
3. Point to Point connectivity between UIDAI and service agency
4. Encrypted, Digitally signed packets and process governed by IT Act 2000
5. Authentication response limited to Yes/No

The collection of data through enrolment agencies for Aadhaar is fully secure end to end and it does not in any way breach privacy.

8. Para (viii) That in response to para (viii), it is submitted that the petitioners' have made grave allegations without providing an iota of evidence. It is reiterated that UID system cause no grave breach of the right to privacy enshrined in Article 21 of the Constitution.
9. Para (ix). That in response to para (ix), it is submitted that Aadhaar is a policy initiative of the Government and like any other programme of the Government it undergoes fully parliamentary scrutiny on an on going basis and the Union Government has recently approved a legislative framework to move official amendment to the NIDAI Bill 2010
10. Para (x). That in response to para (x), it is submitted that harnessing this random 12 digit number for various social welfare schemes is the next logical and natural step and for which the State cannot be faulted as the objective and the scope behind every social welfare scheme is to make such scheme(s) more effective and efficient and to reach maximum number of people. It is further submitted that if for the purpose of 'public good', personal and biometric information of a beneficiary is being sought by UID for Aadhaar generation and authentication usage. The use of Aadhaar for other State social welfare benefits in a fair, just and reasonable manner and for lawful purpose then cannot be seen as

invasive to the Right to Privacy or violative of Article 21 of the Constitution. The implementation of Aadhaar is well regulated. The Registrars of the UIDAI are all Central and State Government departments, public Sector Banks and fully regulated entities. There is no excessive power to the Registrars, in fact their work is electronically monitored to ensure there is no leakage or misuse of even the minimal information being collected under the programme.

IV. FACTS IN BRIEF CONSTITUTING THE CASE

1. Para 1. That the contents of para 1 are matter of record. However, it is submitted that UIDAI is duly constituted attached office of the Planning Commission. The basic objective of the UIDAI is to empower residents of India with a unique identity and a digital platform to authenticate anytime, anywhere.

2. Para 2. The contents of para 2 are matter of record along with Exhibit B (Copy of Aadhaar application form), Exhibit C (Copy of the UID Strategy Overview dated April 2010). However, Exhibit D is denied for being vexatious, and misleading. With respect to the assertion that even a person possessing the Aadhaar card cannot authenticate his or her identity and that only "those in charge of the UID database have means and authority to authenticate",

the same is denied for being misleading. It is submitted that the process drawn up for authentication is without any manual intervention at UIDAI authentication point. It is also submitted that demographic data collected from the resident includes only four mandatory fields- name, age, gender and address and other fields like phone numbers, email, and bank account etc are optional for the resident. The UIDAI ensures that person possessing Aadhaar is at all times in full control of his data and only consent based authentication of his identity can take place. Unlike conventional paper based identity systems, Aadhaar cannot be misused by obtaining unauthorized copies. Aadhaar is the pure identity programme of the Government of India unlike proxy identity documents like the PAN card, Passport, Ration card, Driving Licence, BPL card, MGNREGA card and other similar cards. It is important to understand that these proxy cards are in fact entitlement cards which have come to be used as identity cards in the absence of a generic identity instrument like Aadhaar. For instance the PAN card is required to establish the relationship of individual with Income Tax Department, the Passport is a travel document the Ration card is an entitlement document for obtaining subsidized ration. The Driving Licence is a proof of the ability of an individual to drive a motor vehicle. The BPL card establishes income level and the MGNREGA card is issued to only job seeker under the programme. None of

these cards are available to the entire population and each one of them has been designed for a specific purpose. Consequently, they only serve a limited purpose and do not substitute for a generic, all purpose robust identity document.

3. Para 3 The contents of para 3 are matter of record.

4. Para 4. That in response to para 4 with sub-paras I – VII are matter of record

5. Para 5. That the contents of para 5 with sub-paras I – XI are matter of record.

6. Para 6. That the contents of para 6 are matter of record.

7. Para 7. That the contents of para 7 are matter of record.

8. Para 8. That the contents of para 8 are mischevious, misleading and hence denied.

9. Para 9. That the contents of para 9 are admitted. However the contention of the petitioners' in sub-para (b) is denied that the UIDAI has claimed that the UID will overhaul internal security and assist the investigating agencies

10. Para 10. That it is denied that UID has set out that its main task is data collection. This contention is not correct as the main task of UIDAI is to issue de-duplicated identity or Aadhaar number and provide authentication services. It is submitted that the passage of any Bill by the Parliament is as per the legislative procedure and UID scheme was/is never meant to go against the wishes of the Parliament. The scheme has the approval of the Government at the highest level and its funding requirements are being met year after year with the approval of the Parliament under the Appropriation Act.

It is further submitted that the petitioners' have identified several steps/activities, namely, "data collection", "data processing", "data protection" and "data destruction" for the purpose of creation of national identity card or number. In this context, it is submitted that the respondent has adopted all such steps/activities with an elaborate and auditable due diligence framework. For Aadhaar generation the contention that the UIDAI requires data collection on information like health records, bank transactions or use of public transport is baseless.

11 Para 11 That the contents of para 11 are admitted to the extent that the Aadhaar numbers are to be used as the basis of authentication of the identity of Indian

residents seeking to avail certain services and the UIDAI while authenticating the identity of a user only confirms or denies the authenticity of the number and its holder, i.e., by way of simple 'Yes' or 'No' answer. It is denied that from the authentication requests, it is possible to track the location and utilization of services by the holder of an Aadhaar number. It is submitted that the UID system has not been created to track Aadhaar card holder either physically or virtually. It is further submitted that UIDAI has not committed itself in any manner whatsoever to share any information collected by it with the National Intelligence Grid (NATGRID).

It is also submitted that the study by Paul Ohm titled "Broken Promises of Privacy. Responding to the Surprising Failure of Anonymisation", which was first published in 2010 is critical of every privacy legislation whether it was from Europe or the US. Further, it studied the databases created by private enterprises, like Netflix and America Online in the context of Internet privacy. The petitioners' have failed to understand that this study is not applicable in the context of Aadhaar system.

Para 12. That the contents of para 12 are mischievous, misleading and hence denied

It is further submitted that The UIDAI biometric system design has followed global best practices. In designing

UIDAI's biometric system, UIDAI reviewed existing state-of-the-art biometric systems, consulted with the world's top biometric experts, conducted a proof of concept study and built biometric system that is currently considered to be world's best. UIDAI has also regularly measured and published empirical and verifiable results. Reviews of the facts and the measures of the live production system are in stark contrast with the claims made about efficacy and accuracy of biometrics system.

A summary of details are as follows:

- (i) In December of 2009, UIDAI Committee on Biometrics published its report titled "Biometric Design Standards for UID Applications".

The committee acknowledged that most other large-scale biometrics deployments were fingerprint-only and a fingerprint-based system may present challenges in India due to large number of people engaged in agriculture and other manual labour intensive occupations. The committee therefore held extensive meetings and discussions with international experts and technology providers. A technical sub-group analysed fingerprint data collected from Delhi, UP, Bihar, and Orissa and found that the quality of the data was not substantially different from those collected in western countries. The committee said

that it is possible to improve the accuracy of fingerprint system by additionally using iris. *"Iris can provide accuracy, comparable to fingerprints. Therefore fused score of two uncorrelated modalities will provide better accuracy than any single modality and could achieve the target accuracy"*. The final biometric committee report for this study concluded: "The biometric accuracy levels necessary for de-duplication of all residents of India are achievable".

- (ii) In December of 2010, UIDAI published a report titled "UID Enrolment Proof-of-Concept Report". The report documents the findings of enrolment proof-of-concept (PoC) study commissioned by UIDAI in three rural areas of Andhra Pradesh, Karnataka, and Bihar. Among other findings both on process and technology, the report says *"The biometric matching analysis of 40,000 people showed that the accuracy levels achieved using both iris and ten fingerprints were more than an order of magnitude better compared to using either of the two individually. The multi-modal enrolment was adequate to carry out de-duplication on a much larger scale, with reasonable expectations of extending it to all residents of India"*.
- (iii) Subsequently UIDAI developed a multi-modal biometric de-duplication system based on the

recommendations of the PoC. The report published in December 2011 has true and tested statistics computed from real operational system at a gallery size (i.e. size of the enrolment database) of 8.4 crore, which is more than 4,000 times the sample size that was available at the time of enrolment PoC. There is no longer a need to rely on small sample size tests or hearsay from other projects. In the above mentioned report, following key observations are made:

- Failure to Enrol (FTE) Rate: Zero. As a policy, every unique resident, regardless of their biometrics can be enrolled and issued Aadhaar number.
- Biometric Failure to Enrol (B-FTE) Rate: 0.14%. This implies that 99.86% of the population can be uniquely identified by the biometric system. The exceptions (0.14%), however can still be de-duplicated using demographic data and checked manually for fraud. The legitimate cases among these will be issued Aadhaar number.
- False Positive Identification Rate (FPIR): 0.057%. This implies that 99.94% of duplicates returned by the biometric de-duplication system are correctly found. In practical terms, it means that at a run rate of 10 lakh enrolments a day, approximately only

570 cases need to be manually reviewed daily to ensure that no resident is erroneously denied an Aadhaar number. UIDAI is currently having a manual adjudication team that reviews and resolves such cases.

- False Negative Identification Rate (FNIR): 0.035%.

This implies that 99.965% of all duplicates submitted to the biometric de-duplication system are correctly caught by the system as duplicates.

Scalability: The system is currently processing 10 lakhs (1 million) enrolments a day with enrolment database (gallery) of 9 crore (90 million) as at the time of study. The additional computing power required to handle increasing number of enrolments will not grow at an abnormally high (non-linear) rate; it is well within the design and expectations of the UIDAI.

It is thus evident from the above that the UIDAI's biometric system accuracy is indeed very high and perhaps the best in the world. Both the FPIR and FTE numbers are infinitesimally small in comparison to wildly speculative numbers that have appeared in some of the critiques of UIDAI. In fact, the Aadhaar project has established India as the world leader in practical biometric implementations.

It is further submitted that the huge positive impact of 99.9% and above accuracy has to be seen in the context of social welfare benefits it would accrue to a large section of the Indian population, instead of dismissing the programme due to the presence of a small margin of error.

It is important to note that currently Aadhaar system has issued more than 53 crore Aadhaars and more than 64.32 Crore enrolments are done on the ground. UIDAI de-duplication system has successfully detected and rejected about 4.56 crore duplicates so far. Further, the UIDAI system has an established policy and process to detect and cancel potential duplicates that may have been missed by the biometric de-duplication system. The online biometric authentication ensures that such cancelled Aadhaar numbers cannot be used ensuring that the system is accurate and clean.

By emphasizing scientific approach to data quality, end to end system monitoring and analytics, completely open standard based "vendor neutral" application architecture, and continuous improvement based on modelling of actual process data, UIDAI has demonstrated a world class

system that is secure and scalable can indeed be implemented in India. Copies of Reports as mentioned in (i) – (iii) are annexed herein along with Glossary of Terms used and marked as **Annexure R/8 (Colly) (Pages 159 to 253)**.

It is humbly submitted that the UK project has little in common with the UID effort in India. The UK project was initiated with the goal of counter-terrorism and immigration control. As such it was collecting a lot of details about the person, whereas the UIDAI project's goal was creation of a single ID for every resident using minimal data to improve service delivery while being inclusive to the poor and marginalized. Just citing failure of a project that has very little similarities is neither appropriate nor accurate.

Para 13. That in response to para 13 it is submitted that the petitioners' have made reference to the previous draft NIDAI Bill. It is further submitted that the draft National Identification Authority of India (NIDAI) Bill finalised by the Government also has provisions to constitute an 'Identity Review Committee (IRC)' to discharge functions in respect of any matter connected with the usage of Aadhaar numbers. The IRC members will be selected by a Committee

to be chaired by the Prime Minister with membership of the Leader of the Opposition in Lok Sabha and a Union Cabinet Minister to be nominated by the Prime Minister. The Review Committee shall ascertain the extent and pattern of usage of the Aadhaar numbers across the country and prepare a report annually in relation to the extent and pattern of usage of the Aadhaar numbers along with its recommendations thereon and submit the same to the Central Government. A copy of this report is also to be tabled in both Houses of Parliament.

It is further submitted that even though the draft NIDAI Bill has been finalised, nevertheless, the IT Act and Rules made there under, are sufficient enough to regulate the collection, disclosure, and use of individuals' sensitive personal data in the form of biometric data or information

Para 14. That the contents of para 14 are matter of record.

However, it is submitted that there were three 'Note(s) of Dissent' by three members of the Committee against the observations and recommendations.

V. RIGHT TO PRIVACY

Para 15 That the contents of para 15 are mischevious, misleading and hence denied. it is prayed that the right to privacy is not an absolute right. In *Sharda v. Dhrampal*, (2003) 4 SCC 493, this Hon'ble court has held that the right to privacy in terms of Article 21 of the Constitution is not an absolute right. Again in *Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women*, AIR 2010 SC 2851, this Hon'ble Court has held that there is no violation of the right to life, or privacy of a person, in directing a DNA test to be undergone by him - to undergo such test is not an invasion of his right to life. Moreover, Right to Privacy of has to be seen in the context of the right to development and the need of government agencies ensuring that services reach only those beneficiaries who are entitled to. It has been age old practice to use physical photographs and thumb impressions in identification and authentication. In the context of this petition, it is submitted that if for the purpose of 'public good', personal and sensitive personal information of a beneficiary not only being sought by UID but it is further linked to other State social welfare benefits in a fair, just and reasonable manner and for lawful purpose then the Right to Privacy cannot said to be said to be violated as enshrined under Article 21 of the Constitution.

Sub-para I: The contents of sub-para I (i) related to 'Sub-registrar' and referring to point # 1 & 2 are denied in the

context that the State would be virtually accessing and intruding into the life of each and every resident of India by integrating/convergence of different silos of information.

It is submitted that UID system acts as a facilitator as it facilitates end-to-end computerisation. Aadhaar is a 12 digit random number, which is devoid of any intelligence and does not profile people based on caste, creed, religion, income and geography..The UIDAI appoints Registrars to help it to implement the project across the country. The Registrars are totally controlled group consisting of Central and State Government departments and select financial institutions like Public Sector banks which have a wide network and deal with large number of people in the discharge of their normal functions. The use of such agencies by the Central Government is a standard practice given that Government of India does not have presence in every nook and corner of the country. As in the case of other central programmes such as National Rural Health Mission, SarvaShikshaAbhiyan, National Social Assistance programme etc. In the case of Aadhaar too the Government of India uses the services of the State Governments to provide oversight to implementation of its schemes. Financial institutions particularly banks and the Post Offices are also regularly used by the Central Government to implement its programmes included those relating to disbursement of pension and scholarships. The use of these

agencies for Aadhaar is following well established protocols of implementing policies and programmes of the Government of India. State Governments provide oversight to central government programmes as a part of constitutional arrangements and not based on Agreements. In the instance case MOU has been entered with the States only to make explicit the implicit roles and responsibilities of the State Governments and not because of any legal necessity. While the UIDAI only prescribes minimal demographic data to be collected for its own purpose (name, gender, age, address) it allows Registrars to collect additional information of relevance to the in the discharge of their respective public duties. However, the UIDAI does not retain or use the additional information collected by the Registrars for any purpose of its own. As such the question of the State having integrated details of each resident is out of question. There is no excessive delegation to the Registrars which are all public agencies and their work under the Aadhaar project is confined to well laid down guidelines. In any case encryption of data at source further ensures that there is no breach of privacy and even in the case of theft of devices used for collection of data, such data cannot be decrypted much less used for any purpose

- b Sub-para I: The contents of sub-para I (ii) related to 'Excessive Delegation' are false and thus denied. It is submitted that the

petitioners' have failed to understand that the implementation of a public programme touching more than 120 crore persons across the country requires a collaborative effort involving government and non government agencies. At any given moment the UIDAI has over 15,000 enrolment stations in the field and it is just not possible to burden government agencies and employees to do this work on an extended period in addition to their assigned work. The network of school teachers, health workers and post office staff which are the major government agencies at the cutting edge level must be left to do their work. Already a lot of their time is taken by election duty, census work and health work like polio vaccination drives etc placing a limitation on using them for any other work. The availability of such persons for Aadhaar is further circumscribed by the fact that it requires technically qualified persons to enrol residents and such technical skills are not widely available amongst grass root government functionaries across the country. Modern IT technology is however capable of remotely ensuring that quality standards, safety and security and due processes don't

get compromised using outside personnel. Infact the UIDAI is able monitor the enrolment work far more closely and intensively using Information Technology than would be possible for human eyes to observe in the field. Aadhaar is a precursor to e- governance on a large scale in the country, the project establishing new and safer ways of conducting government business through collaborative efforts and the work methodology of the UIDAI while being robust and foolproof cannot be challenged applying conventional pen and paper, manpower intensive methodologies.

It is further submitted that the every partner agency is subjected to rigorous audit procedures and audit trails of such audits are being maintained.

Para 16. That the contents of para 16 are misleading, false and hence denied. The petitioners have failed to understand that India is considered as one of powerhouse countries in ICT and in fact we are the code writers to the world. The petitioners have to come out of their conservative, non-technology mindset to appreciate that UID based scheme are initiatives of the

State towards Electronic Service Delivery (ESD) in the realm of electronic governance. The rapid scale of telecom coverage in the country is an example which proves that substantial scale can be achieved in short period of time if the service delivers value to the people. It is admitted that it is the world's largest database because it is catering to the second largest population in the world. The petitioners' have failed to highlight a singular case of hacking of or attempt to hack.

Presently, UIDAI undertakes following audits on a periodic basis: (i) Enrolment Client Audit; (ii) Enrolment Process (Field) Audits; (iii) Application Software Development and Maintenance and Service Agency (ASDMSA) Application Audits; (iv) Authentication User Agency Audits; (v) Data Center Audits; (vi) Security Audits; (vii) Impact Assessment (Grants in Aid for Research); and (viii) Other Third Party Audit Services.

It is humbly prayed that the UID project is a complex technology project. Nowhere in the world has such a large bio-metric database of a billion people been attempted. The technical architecture of the UID scheme has been designed to ensure clear data verification, authentication and de-duplication, while

ensuring a high level of privacy and information security.

It is further submitted that the security measures adopted for data protection in the UIDAI compare with the best in the world, and there is no question of compromising the data security by any means.

Sub-para I: The contents of sub-para I (i) related to 'Audit Trail' are false, mischievous and hence denied. It is submitted that the petitioners' have made a very narrow interpretation of audit trail process (es). The interview of Edgar Whitely as referred to by the petitioner in this petition is based on a wrong premise, i.e., the Health Clinic Number 45 would be taking and using fingerprint for verification, whereas in actual practice Health Clinic 45 will just be referring Aadhaar no. of the visitor and obtain either Yes or No from the Centralised database

Sub-para I: The contents of sub-para I (i) relating to interpretation of 'Disclosure of Information' with respect to Cl.33 of NID Bill are false, mischievous and hence denied. It is submitted that it is wrong to assert that there is a legal vacuum, even though the Government has recently approved a legislative

framework in the form of NIDAI Bill. Nevertheless, the IT Act and Rules made there under are sufficient enough to regulate the collection, disclosure, and use of individuals sensitive personal data in the form of biometric data or information and imposes penalties in terms of compensation (of Rs. 5 crores and more) and/or imprisonment terms for violating provisions of law pertaining to the individual's sensitive personal data.

Further, even in case of data theft, identity fraud, impersonation etc., the same can be addressed under section 66 [computer related offences], 66C [punishment for identity theft] and 66D [punishment for cheating by personation by using computer resource] of the IT Act.

The UIDAI system is designed to ensure that individuals cannot be tracked or profiled. The UIDAI system is not designed to aggregate information on the basis of authentication services used by an individual. The authority is in fact blind to the end purposes of authentication. As a matter of policy as well as, as per provisions in the proposed NIDAI Bill, the authority is committed to ensure the security and confidentiality of identity information and authentication records of individuals. Authentication information can only be obtained by the Aadhaar number holder or in pursuance

of an order of a competent court or in the interest of national security in pursuance of a direction to that effect issued by officer not below the rank of Joint Secretary or equivalent in the Centre specifically authorized in this behalf by an order of the Central Government.

Sub-para 1 : The contents of sub-para 1 related to 'Destruction of Data' are false, mischievous and hence denied. It is submitted that the UIDAI soon after its formation set up a Biometrics Standard Committee in order to frame biometrics standards based on existing national and international standards with the consensus of various government stakeholders. It concluded that the ISO 19794 series of biometrics standards for fingerprints, face and iris set by ISO are the most suitable. It is further submitted that the Aadhaar number is stored in a centralized database and linked to the basic demographics and biometric information – photograph, ten fingerprints and both iris – of each individual as mentioned above. It is verifiable in the form of Yes/ No to establish identity of a person in an online, cost-effective way. It is unique and robust enough to eliminate the large number of duplicate and fake identities in Government and private databases.

It is further submitted that the Aadhaar number issued by the UIDAI can be used both as Proof of Identity as well as a Proof of Address. The demographic data collected by the UIDAI (name, age, gender, address) is useful for both these purposes. The UIDAI provides multi-layered identification service wherein an individual can be authenticated on the basis of both demographic as well as biometric data and as such there is no case for destruction of the demographic data.

Para 17. The contents of para 17 are matter of record. It is submitted that in the catena of judgments the Hon'ble Supreme Court has held that although the Right to Privacy is an integral part of the Right to Life under Article 21, but it has also observed that it is not an absolute right.

Para 18 – 22. The contents of para 18 -22 are matter of record. It is submitted that though the Constitution of India has not guaranteed the right to privacy as a fundamental right to the citizens but nevertheless, this Hon'ble Court has come to the rescue of common citizen, time and again by construing "right to privacy" as a part of the right to "protection of life and personal liberty". However, it is submitted that this Hon'ble

Court has over a period of time articulated that the right to privacy has two limbs: (1) the constitutional recognition given to the right to privacy under Article 21 which protects personal privacy against unlawful government invasion, and (2) the ordinary law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy.

I. Right to Privacy – Constitutional Recognition

This Hon'ble Court in *Ram Narain v. State of Bombay*, 1952 SCR 652 has observed that "those who are called upon to deprive other persons of their personal liberty in the discharge of what they conceive to be their duty must strictly and scrupulously observe the forms and rules of the law." In fact, this Hon'ble Court in *Gobind v. State of Madhya Pradesh*, (1975) 2 SCC 148, Mathew J. stated the law in the following words:

"privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior. If the Court does find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling State interest test. . . .

.....privacy primarily concerns the individual. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values”.

Further in *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, a seven-Judge Bench decision, P.N. Bhagwati, J. (as his Lordship then was) held that the expression “personal liberty” in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and give additional protection under Article 19. Any law interfering with personal liberty of a person must satisfy a triple test: (i) it must prescribe a procedure; (ii) the procedure must withstand a test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation; and (iii) it must also be liable to be tested with reference to Article 14. As the test propounded by Article 14 pervades Article 21 as well, the law and procedure authorising interference with the personal liberty must also be right and just and fair and not arbitrary, fanciful or oppressive. If the

procedure prescribed does not satisfy the requirement of Article 14, it would be no procedure at all within the meaning of Article 21. Similarly, in *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & Ors.*, AIR 1981 SC 746), this Hon'ble Court has observed that privacy and dignity of human life has always been considered a fundamental human right of every human being like any other key values such as freedom of association and freedom of speech. Therefore, every act which offends or impairs human dignity tantamounts to deprivation pro tanto of his right to live and the State action must be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights.

Again this Hon'ble court in *People's Union for Civil Liberties (PUCL) v Union of India*, (1997) 1 SCC 301, "The right to privacy – by itself – has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. As in *Mr. 'X' v Hospital Z'*, (1998) 8 SCC 296 where the appellant's blood was to be transfused to another but he was tested HIV (+) at the respondent's hospital. On the account of disclosure of

this fact, the appellant's proposed marriage to one A, which had been accepted, was called off. Moreover, he was severally criticized and was also ostracized by the community. Before this Hon'ble Court the appellant contended that the principle of "duty of care" applicable to persons in medical profession included the duty to maintain confidentiality and that the said duty had a correlative right vested in the patient that whatever came to the knowledge of the doctor would not be divulged. The appellant added that for violating that duty as well as for violating the appellant's right to privacy, the respondents were liable for damages to the appellant. However, this Hon'ble Court while rejecting the appellant's contentions, held that the "right to privacy has been culled out of the provisions of Article 21 and other provisions of the Constitution relating to the Fundamental Rights read with the Directive Principles of State Policy. Right of privacy may, apart from contract, also arise out of a particular specific relationship, which may be commercial, matrimonial, or even political. Doctor-patient relationship, though basically commercial, is professionally, a matter of confidence and, therefore, doctors are morally and ethically bound to maintain confidentiality. In such a situation, public disclosure of even true private facts may amount to an invasion of the right of privacy which may sometimes lead to the

clash of one person's "right to be let alone" with another person's right to be informed. The right, however, is not absolute and may be lawfully restricted for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others". It held:

"Where there is a clash of two fundamental rights, as in this case, right of privacy of one party as part of right to life and right to lead a healthy life of another party which is also a fundamental right under Article 21, the right which would advance the public morality or public interest, would alone be enforced through the process of court, for the reason that moral consideration cannot be kept at bay and the judges are not expected to sit as mute structures of clay in the hall known as the courtroom, but have to be sensitive, "in the sense that they must keep their fingers firmly upon the pulse of the accepted morality of the day".

Similarly, in *Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women* AIR 2010 SC 2851 have held that there is no violation of the right to life, or privacy of a person, in directing a DNA test to be undergone by him - to undergo such test is not an invasion of his right to life;

It is further submitted that this Hon'ble Court in catena of judgments has observed that the right of privacy may not be absolute, it can be lawfully restricted for prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others in wider public interest. (Vide: *Malak Singh etc.v. State of Punjab & Haryana & Ors.*, AIR 1981 SC 760; *State of Maharashtra & Anr.v. Madhukar Narayan Mardikar*, AIR 1991 SC 207; *R. Rajagopal @ R.R. Gopal & Anr. v. State of Tamil Nadu & Ors.*, AIR 1995 SC 264; *PUCL v. Union of India & Anr.*, AIR 1997 SC 568; *Mr. 'X' v. Hospital 'Z'*, (1998) 8 SCC 296; *Sharda v. Dharmpal*, (2003) 4 SCC 493 ; *People's Union for Civil Liberties (PUCL) & Anr. v. Union of India & Anr.*, AIR 2003 SC 2363 ; *District Registrar and Collector, Hyderabad & Anr.v. Canara Bank & Ors.*, (2005) 1 SCC 496 ; *Bhavesh Jayanti Lakhani v. State of Maharashtra & Ors.*, (2009) 9 SCC 551; and *Smt. Selvi & Ors.v. State of Karnataka*, AIR 2010 SC 1974).

In *Ram Jethmalani & Ors. v. Union of India & Ors.*, (2011) 8 SCC 1, this Hon'ble Court has dealt with the right of privacy elaborately and held as under:

"Right to privacy is an integral part of right to life. This is a cherished constitutional value, and it is important that human beings be allowed domains of freedom that are free of public scrutiny unless they act in an unlawful manner.....

The solution for the problem of abrogation of one zone of constitutional values cannot be the creation of another zone of abrogation of constitutional values..... The notion of fundamental rights, such as a right to privacy as part of right to life, is not merely that the State is enjoined from derogating from them. It also includes the responsibility of the State to uphold them against the actions of others in the society, even in the context of exercise of fundamental rights by those others".

In this context it is submitted that the Delhi High Court in *RohitShekhar v Narayan DuttTiwari&Anr.*[FAO(OS) 547/2011], has observed that

"that the level of privacy protection depends on the context; that Human Rights law justifies carrying out of compulsory and mandatory medical examination which may be bodily invasive and that the right to privacy is not an

absolute right and can be reasonably curtailed”.

Similarly in, the Bombay High Court in *Radiological and Imaging Association v Union of India* [2011 (113) BomLR 3107] has held that

“.....the entire petition is based on the premise that the information stored in the silent observer which contains the images of ultra sonography on all patients will be transmitted on-line and will be available in public domain and thereby would violate the privacy rights of the patients undergoing ultrasonography. The entire premise and the apprehension based thereon is without any basis.”

It has further held that right to privacy is not absolute and is subject to restrictions on the grounds of public interest. It also held that there are enough procedural safeguards to protect the privacy of the patients. Further in *In G.Raman Alias Ramachandran v The Superintendent of Police*[WP(MD) No.12272 of 2012],Madurai Bench of Madras High Court held In public interest, the Police has got a right to disseminate information, concerning law and order, and crime. Display or publication of a photograph of a

History Sheeted Rowdy, may be contended to infringe upon a person's right, in so far as it affects his identity, reputation in the minds of others, but, at the same time, public interest would prevail over private interest.

In *AlarmeluMangai v The Secretary to the Government of Tamil Nadu*[WP14781/2004], the Madras High Court held that there is no legal difficulty in ordering compensation to the petitioners for infringement of her right to privacy and the ordeal of public humiliation meted out to her by action of the respondents.

II. Right to Privacy – Actionable Tort

That it is submitted that this Hon'ble court has for the first time recognised in *Rajagopal* case that there is a tort of invasion of privacy. Jeevan Reddy, B.P., J has set out the principles involved:

(1)The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone" A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-

bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

There is thus no protection for personal information in public records, and protection of privacy for persons who have voluntarily placed themselves in the public eye is reduced, but otherwise tort law provides substantial protection for information privacy, including where the information is true.

It was further articulated that

"The right to privacy as an independent and distinctive concept originated in the field of Tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was recognised. This right has two aspects which are but two faces of the same coin (1) the general law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and (2) the constitutional recognition given to the right to privacy which protects personal privacy against unlawful governmental invasion. The first aspect of this right must be said to have been violated where, for example, a person's name or likeness is used, without his consent, for advertising or non-advertising purposes or for that matter, his life story is written whether laudatory or otherwise and published

without his consent as explained hereinafter. In recent times, however, this right has acquired a constitutional status.”

Further, the Delhi High Court in *Secretary General, Supreme Court of India v Subhash Chandra Aggarwal* [LPA 501/2009] has reiterated again; “that the right to privacy as an independent and distinctive concept originated in the field of Tort law, under which the new cause of action for damages resulting from unlawful invasion of privacy was recognized. This right has two aspects: (i) The ordinary law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and (ii) the constitutional recognition given to the right to privacy which protects personal privacy against unlawful government invasion”.

It is prayed that the catena of judgments of this Hon'ble Court establish:

- (a) that the individual's right to privacy exist;
- (b) that there is constitutional recognition given to the right of privacy which protects personal privacy against unlawful governmental invasion, however, the right to privacy can be curtailed in accordance with procedure validly established by law. The procedure itself must be

fair, just and reasonable and non-arbitrary, fanciful or oppressive;

(c) that the person's "right to be let alone" is not an absolute right and may be lawfully restricted or reasonably curtailed for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others; and

(d) that the right of privacy as an actionable tort has been recognised and tort action for damages resulting from an unlawful invasion of privacy may lie in case of breach of an individual's information privacy.

That in the context of this petition, it is submitted that if for the purpose of 'public good', personal and sensitive personal information of a beneficiary not only being sought by UID but it is further linked to other State social welfare benefits in a fair, just and reasonable manner and for lawful purpose with adequate safeguards, then the Right to Privacy cannot be said to be violated as enshrined under Article 21 of the Constitution. Further, the IT Act and Rules made thereunder are sufficient enough to regulate the collection, disclosure, and use of individuals sensitive personal data in the form of biometric data or information and imposes penalties in terms of compensation (of Rs 5 crore and more) and/or imprisonment terms for violating provisions of law pertaining to the individual's sensitive personal data.

VI. RATIONAL NEXUS BETWEEN UID AND THE POLICY

OBJECTIVE

Para 23. That the contents of para 23 are misleading, mischievous and hence denied. It is humbly submitted that UIDAI has conducted several Proof of Concepts (PoCs) across the country to scientifically study the accuracy and performance aspects of biometric authentication and come up with standards, certification schemes, best practices, and formal reports regarding biometric authentication.

The UIDAI has undertaken a very large number of studies, Proof of Concept and Pilot Projects to conclusively demonstrate the efficacy of Aadhaar to uniquely recognise individuals, authenticate them in a few seconds using simple, secure and inexpensive devices and apply Aadhaar to deliver a host of services. Moving beyond pilot projects Aadhaar has in fact in a matter of a short time successfully authenticated over 2.77 Crore individuals at service points which is a large enough number to put its usage beyond doubt. This is in addition to over 64.32 crore persons enrolled. The benefits of Aadhaar under DBT are manifest amongst others in detecting duplicates in its application to distribution of LPG subsidy covering over 3.06 crore transactions since

June 2013. The utility of linking Aadhaar to welfare schemes is also recognised by the order of this Hon'ble Court dated 14.09.2011 in PUCL v Union of India WP(C) No. 161 of 2001. It is therefore humbly prayed that petitioners plea to resist linkage of Aadhaar to welfare schemes may be rejected.

Para 24. The contents of para 24 are misleading and hence denied. It is submitted that the UID scheme is a kind of end-to-end computerization to identify a resident of India by means of a random unique 12 digit number. That is, if a scheme, like PDS has to reach large number of beneficiaries then it would be imperative that information & communication technology tools to be used for effective and efficient allocation of resources. It is humbly submitted that in the National Food Security Act, 2013 the Section 12 [Reforms in Targeted Public Distribution System] provides that:

- (1) *The Central & State Governments shall endeavour to progressively undertake necessary reforms in Targeted Public Distribution System in consonance with the role envisaged for them in this Act.*
- (2) *The reforms shall inter-alia, include –*
 - (a) *doorstep delivery of food grains to the Targeted Public Distribution System outlets*

- (b) *application of information & communication technology tools including end-to-end computerisation in order to ensure transparent recording of transactions at all levels, and to prevent diversions,*
- (c) *leveraging "aadhaar" for unique identification with biometric information of entitled beneficiary for proper targeting of benefits under this Act,*
- (d) * * * * *

That the Government is keen to leverage "Aadhaar" for proper targeting of benefits 'Targeted Public Distribution System', in the form of Direct Benefit Transfer. The Order of the Hon'ble SC dated 14-09-2011 in WP No. 196 of 2001 titled PUCL Vs. Union of India &Ors is also relevant in this regard.

It is submitted that the Government has undertaken selectively these delivery models related to PDS, pension and scholarships etc. which have been administered in offline mode for the last many decades, now with the help of ICT tools, as the Government wishes to empower the poor with schemes, wherein they could be able to avail benefits regularly without any interference. These schemes facilitated by Aadhaar is e-governance kind of technology-enablement of large section of population who

have always remained in the category of digital have not's.

It is further submitted that the use of Aadhaar can actually help in removing some of the inefficiencies in PDS schemes like ghost beneficiaries and duplicates. The use of Aadhaar brings in transparency, accountability and portability in the welfare delivery system. It directly enables empowerment of beneficiaries of such welfare programme by providing them their due share of the welfare programme. (As per Justice Wadhwa Committee Report the use of Aadhaar can have immense IT application to the advantage of the beneficiaries.) The utility of Aadhaar has been tested for implementation of PDS by the Government of Andhra Pradesh.

Para 25. That the contents of para 25 are admitted to the extent that the primary purpose of UIDAI is said to be to improve the welfare system in the country by eradicating identity theft through duplication of identity. In this context, it is submitted that the very nature of Aadhaar, and its basic features which are designed innovatively leading to no duplication, proof at point of presence making sure that only the genuine beneficiary gets the benefit, no fakes as this cannot be obtained by non-existent individuals presuppose the use of biometrics as unique to each individual. Because of this reason, a finger-prints based

biometric system shall be at the core of the UIDAI's de-duplication efforts. Indeed, the advantages of Aadhaar will be lost if there were to be no use of biometrics. It is also submitted that in order to identify any individual out of a pool of millions and millions of individuals, one requires unique parameters, which would set that individual apart. These parameters ideally in the present context could be a combination of both 'personal' and 'sensitive personal' information or data'. An individual cannot be uniquely identified in a pool of millions and millions of individual on the basis of combination of name, age, gender, parent's details, education, address (place) only. It requires linkage (or reference) to sensitive personal data of such an individual to bring out the "uniqueness".

Para 26. That the contents of para 26 are false, misleading, mischievous and hence denied. It is submitted that improvement in PDS is confined to few of the States only on account of pro-active use of ICT tools by certain State Governments, whereas approach of Aadhaar is pan-India. Aadhaar is actually facilitating PDS by removing the fake identities from the PDS system. It is more important for the State to weed out the "fakes" and "duplicates" and ascertain delivery to the entitled person for the larger social good in the short run than to keep on suffering them forever at a huge recurring social welfare

India. Thus the Election photo card (EPIC) is available only to population above 18 years of age, PAN cards to only Income tax assesses, driving license to those who can drive and ration card to those family requiring subsidised ration only. Aadhaar, however is available to the entire population subject only to them being residents of India.

The Aadhaar number will become a Lifetime ID where 50% residents are without a birth certificate. It will be an ID that is valid nationwide unlike proxy ID's like ration card which are not recognised beyond the issuing state and are often the only ID of the poor. Aadhaar as a pan-India ID will be particularly useful for an estimated more than 300 million domestic migrants particularly those moving from rural to urban areas. Once residents enroll, they can use the Aadhaar number to access most of the services such as obtaining a bank account, passport, driving license, and so on instead of the proxy documents like ration card, driving license which are documents for entitlement of rations, entitlement to drive etc. The number will also give migrants mobility of identity

It is further submitted that this is the only program of its kind globally where a state-of-the-art digital, and online Id is being provided free of cost at such a large scale to people, and has the potential to change the way service delivery functions in this country. As a mere indicator of this exercise, it is submitted that in a short span of four

years, the UIDAI has enrolled over 64.32 crore individuals for Aadhaar and is operating over 15000 enrolment points across the country to enrol an additional 10 lakh persons per day. In fact, this only goes to show the great demand and felt need for a fool proof identity among the people.

Further, in order to maintain reliability and authenticity of the entire identification exercise completely devoid of fakes and ghost beneficiaries, UIDAI has introduced an elaborate system of checks-and-balances. A resident who seeks to obtain an Aadhaar number shall provide his/her demographic and biometric information to enrolling agencies appointed by Registrars using verification processes prescribed by UIDAI as this will ensure that the data collected is clean right from the beginning of the programme. A resident who does not possess any documentary proof of identity or proof of address can obtain an Aadhaar number by being introduced by an introducer. This has been done in order to ensure that the Know Your Resident (KYR) standard of UIDAI does not become a barrier for enrolling the poor without compromising the integrity of the data. In exceptional cases where no biometrics can be recorded a provision still exists to give Aadhaar to eligible persons thus ensuring zero exclusion on any ground.

Para 28. That the contents of para 28 are admitted to the extent that a database of this scale of 1.2 billion people's

fingerprints and iris scans has never been created. However, it seems that the petitioners' have been more concerned with the scale of database than on the benefits it will bring forth. In fact, petitioners' have not been able to appreciate the fact that India could take a leadership role in biometric identification.

It is humbly submitted that the UK ID Cards project has little in common with the UID effort in India. The UK ID Cards project was initiated with the goal of counter-terrorism and immigration control. As such it was collecting a lot of details about the person, whereas the UIDAI project's goal was creation of a single ID for every resident using minimal data to improve service delivery while being inclusive to the poor and marginalized. Just citing failure of a project that has very little similarities is neither appropriate nor accurate.

This notwithstanding UIDAI does use 1:1 match for its authentication services which the Petitioners admit gives good performance. On the other hand the system is not designed for 1:n match about which the Petitioners have reservations in so far as authentication is concerned. Such an application has not been developed as the UIDAI is not interested in tracking individual on the basis of their biometrics on a random basis and only interested in authenticating individuals where they consent to be authenticated.

Paras 29-30. That in response to contents in paras 29-30, it is submitted that the UIDAI soon after its formation set up a Biometrics Standard Committee in order to frame biometric standards based on best practices and international standards. Further, the committee has been constituted with experts from the government and private sector. The committee has been working on the standards and has already framed standards for 10 finger prints (of 10 fingers) and (iii) full frontal face. The issues of aging and nature of work and its effect on finger prints and iris have already been taken care of while framing best practices by UIDAI.

10 finger prints (of 10 fingers) and (iii) full frontal face. The issues of aging and nature of work and its effect on finger prints and iris have already been taken care of while framing best practices by UIDAI.

It is further submitted that The UIDAI biometric system design has followed global best practices. In designing UIDAI's biometric system, UIDAI reviewed existing state-of-the-art biometric systems, consulted with the world's top biometric experts, conducted a proof of concept study and built biometric system that is currently considered to be one of the best. UIDAI has also conducted a large scale pilot project and the results of the pilot project are in stark contrast with the claims made about efficacy and

accuracy of biometrics system. A summary of details are as follows:

- (i) In December of 2009, UIDAI Committee on Biometrics published its report titled "Biometric Design Standards for UID Applications".

The committee acknowledged that most other large-scale biometrics deployments were fingerprint-only and a fingerprint-based system may present challenges in India due to large number of people engaged in agriculture and other manual labour intensive occupations. The committee therefore held extensive meetings and discussions with international experts and technology providers. A technical sub-group analysed fingerprint data collected from Delhi, UP, Bihar, and Orissa and found that the quality of the data was not substantially different from those collected in western countries. The committee said that it is possible to improve the accuracy of fingerprint system by additionally using iris. *"Iris can provide accuracy comparable to fingerprints. Therefore fused score of two uncorrelated modalities will provide better accuracy than any single modality and could achieve the target accuracy"*. The final biometric committee report for this study concluded:

"The biometric accuracy levels necessary for de-duplication of all residents of India are achievable".

(ii) The report documents the findings of enrolment proof-of-concept (PoC) study commissioned by UIDAI in three rural areas of Andhra Pradesh, Karnataka, and Bihar. Among other findings both on process and technology, the report says *"The biometric matching analysis of 40,000 people showed that the accuracy levels achieved using both iris and ten fingerprints were more than an order of magnitude better compared to using either of the two individually. The multi-modal enrolment was adequate to carry out de-duplication on a much larger scale, with reasonable expectations of extending it to all residents of India"*.

(iii) Subsequently UIDAI developed a multi-modal biometric de-duplication system based on the recommendations of the PoC. The report published in December 2011 has true and tested statistics computed from real operational system at a gallery size (i.e. size of the enrolment database) of 8.4 crore, which is more than 4,000 times the sample size that was available at the time of enrolment PoC. There is no longer a need to rely on small sample size tests or hearsay from other projects.

In the above mentioned report, following key observations are made:

- Failure to Enrol (FTE) Rate: Zero. As a policy, every unique resident, regardless of their biometrics can be enrolled and issued Aadhaar number.
- Biometric Failure to Enrol (B-FTE) Rate: 0.14%.
This implies that 99.86% of the population can be uniquely identified by the biometric system. The exceptions (0.14%) however can still be de-duplicated using demographic data and checked manually for fraud. The legitimate cases among these will be issued Aadhaar number.
- False Positive Identification Rate (FPIR): 0.057%.
This implies that 99.94% of duplicates returned by the biometric de-duplication system are correctly found. In practical terms, it means that at a run rate of 10 lakh enrolments a day, approximately only 570 cases need to be manually reviewed daily to ensure that no resident is erroneously denied an Aadhaar number. UIDAI is currently having a manual adjudication team that reviews and resolves such cases.
- False Negative Identification Rate (FNIR): 0.035%.
This implies that 99.965% of all duplicates submitted to the biometric de-duplication system

are correctly caught by the system as duplicates.

Given that currently approximately 0.5% of enrolments are duplicate submissions, only few thousand duplicate Aadhaars would “possibly” be issued when the entire country of 120 crores is enrolled due to FNIR.

- Scalability: The system is currently processing 10 lakhs (1 million) enrolments a day with enrolment database (gallery) of 9 crore (90 million) as at the time of study. The additional computing power required to handle increasing number of enrolments will not grow at an abnormally high (non-linear) rate; it is well within the design and expectations of the UIDAI.

It is thus evident from the above that the UIDAI's biometric system accuracy is indeed very high and perhaps the best in the world. Both the FPIR and FTE numbers are infinitesimally small in comparison to wildly speculative numbers that have appeared in some of the critiques of UIDAI. In fact, the Aadhaar project has established India as the world leader in practical biometric implementations.

An important point that seems to have been missed in claims of exclusion is that, the huge positive impact of 99.9% and above accuracy, instead of

dismissing the programme due to the presence of a small margin of error.

It is important to note that currently Aadhaar system has issued more than 53 crore Aadhaars and more than 64.32 crore enrolments are done on the ground. Further, the UIDAI system has an established policy and process to detect and cancel potential duplicates that may have been missed by the biometric de-duplication system. The online biometric authentication ensures that such cancelled Aadhaar numbers cannot be used ensuring that the system is accurate and clean.

Further, by emphasizing scientific approach to data quality, end to end system monitoring and analytics, completely open standard based "vendor neutral" application architecture, and continuous improvement based on modelling of actual process data, UIDAI has demonstrated a world class system that is secure and scalable can indeed be implemented in India. Copies of Reports as mentioned in (i) – (iii) are annexed herein along with Glossary of Terms used and marked as **Annexure R/8 (Colly) (Pages 159 to 253)**.

It is further submitted that since the introduction of DBT in January 2013 more than 3.06 Crore successful transactions have been made using biometric authentications have been made which should allay the unfounded apprehensions of the petitioners.

VII. MANDATORY AND COERCIVE

Para 31. That the contents of para 31 are false, misleading and mischievous and hence denied. It is submitted that Aadhaar is a voluntary project with the object to promote inclusion and benefit to the marginalized sections of society who have no formal proof of identity vis-à-vis the State and hence experience difficulties in accessing various welfare schemes that are implemented by the Government of India and State Governments.

It is further submitted that the UID enrolment remains voluntary and the State will make sure, as mentioned above that no current beneficiary under a scheme will unreasonably get affected for want of UID's Aadhaar number.

It is submitted that, Aadhaar is a random 12-digit unique number which the UIDAI issues to all

residents in India on a voluntary basis. The random Aadhaar number generated is devoid of any intelligence and does not profile people based on caste, creed, religion, income and geography.

It is submitted that the number will be stored in a centralized database and linked to the basic demographics and biometric information – photograph, ten fingerprints and both iris – of each individual. It is verifiable in the form of Yes/ No to establish identity of a person in an online, cost-effective way. It is unique and robust enough to eliminate the large number of duplicate and fake identities in Government and private databases.

It is further submitted that the gazette notification dated 26.09.2011 of the Petroleum Ministry is a matter of record. In this context it is submitted that the benefits of Aadhaar under Direct Benefit Transfer (DBT) are manifest amongst others in detecting duplicates in its application to distribution of LPG subsidy covering over 3.06 crore transactions since June 2013. The utility of linking Aadhaar to welfare schemes is also recognised by the order of this Hon'ble Court dated 14.09.2011 in PUCL v Union of India WP(C) No. 161 of 2001. It is therefore humbly prayed that petitioners plea to

resist linkage of Aadhaar to welfare schemes may be rejected. As regarding The GR dated April 2011 issued by the Government of Maharashtra, no comments are offered as it does not concern the answering respondent.

Para 32. The contents of para 32 are false, misleading and mischievous and hence denied. It is submitted that the Aadhaar enrollment remains voluntary does not in any manner amount to an infringement of Fundamental Rights guaranteed to the Subject/s under Part III of the Constitution of India. The Consent of the individual is a sine qua non before issuing a Aadhaar Number and usage therefore, it is a voluntary project with the object to promote inclusion and benefit to the marginalized sections of society who have no formal proof of identity vis-à-vis the State and hence experience difficulties in accessing various welfare schemes that are implemented by the Government of India and State Governments. The fact that over 64 crore individuals have enrolled for Aadhaar is testimony to the fact that the people by and large perceive it to be useful.

Para 33. The contents of para 33 are false, misleading and mischievous and hence denied. It is

specifically denied that the answering respondents are creating a class of excluded non-Aadhaar holders who will be left out of welfare schemes, because they have consciously chosen to not enroll in an untested, premature and at present completely unreliable scheme. In this context, it is submitted that the UID enrolment remains voluntary and the State will make sure, as mentioned above that no current beneficiary under a scheme will unreasonably get affected for want of UID's Aadhaar number.

Further, that due to the reasons cited in above paras it is understood that Aadhaar is not an experiment but a well-conceived administrative tool for social inclusion and plugging the wastage of public money.

It is submitted further that the 'exclusion principle' is to be seen from perspective of bringing efficiency in the delivery of social welfare benefits so that the benefits can accrue to each and every beneficiary, who has been entitled to receive such benefits without delay. Such "exclusion principle" works in obliterating the "fakes" and results in savings to the public exchequer and may result in further enhancement of social welfare benefits to a large number of people. It is humbly submitted that a

welfare State which intends to provide social welfare benefits to maximum number of beneficiary has every right to curb any corrupt or irregular practices by imposing certain safeguards for the benefit of that deprived section of society, which may not get purported benefits on account of misuse. It is once again denied that Aadhaar leads to exclusion. In fact, this is the only program of its kind globally where a state-of-the-art digital, and online Id is being provided free of cost at such a large scale to people, and has the potential to usher e-governance on an unprecedented scale and change the way service delivery functions in this country.

It is further submitted that the use of Aadhaar can actually help in removing some of the inefficiencies in these schemes like delayed payments, ghost beneficiaries and improve transparency through end to end visibility of disbursement of benefits etc. Wherever introduced Aadhaar has streamlined working of schemes and there is no evidence to support the exclusion claim of the petitioners given the clear directions of the Government to ensure no denial of service for want of Aadhaar or bank accounts.

Para 34. That the contents of para 34 are false, misleading and mischievous and hence denied. It is submitted that UID scheme is not working under a legal vacuum. Even though the Government has finalised the draft National Identification Authority of India (NIDAI) Bill, nevertheless, the IT Act and Rules made there under are sufficient enough to regulate the collection, disclosure, and use of sensitive personal data in the form of biometric data or information.

It is further submitted that roll-out of Aadhaar has been done in a phased manner only in districts with high Aadhaar coverage and special arrangements to provide Aadhaar to those without it making sure beneficiaries do not suffer in obtaining social welfare benefits for want of Aadhaar

Reply to Grounds

A. That in reply to ground A it is submitted that the UIDAI has been constituted by the Government of India as an "Attached office" of the Planning Commission by an executive order and its functioning is fully backed by statutes. It has been assigned responsibilities under the Government of India (Allocation of Business Rules) in exercise of the powers conferred by Clause (3) of Article 77 of the Constitution. The UIDAI is authorized to incur

expenditure from the Consolidated Fund of India as approved every year by the Parliament under the Appropriations Act. All issues relating to the Unique Identification Authority of India including its organization, plans, policies programmes, schemes, funding and methodology to be adopted for achieving the objectives of the Authority are supervised by a duly constituted Cabinet Committee on Unique Identification Authority of India related issues.

It is essential to mention here that it is an established principle of law that the executive cannot act against the provisions of a law. However, in view of Article 73 and 162 of the Constitution of India, the respective Government is not debarred from exercising its executive power in the areas which are not regulated by specific legislation. That in reply to ground B it is submitted that the UID scheme is not working under a legislative vacuum. Even though the Government has recently approved a legislative framework to replace National Identification Authority of India (NIDAI) Bill 2010, nevertheless, the Information Technology Act, 2000 and Rules made there under, i.e., The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, are sufficient enough to regulate the

collection, disclosure, and use of sensitive personal data in the form of biometric data or information.

The UIDAI/Aadhaar scheme does not infringe of any fundamental rights. In fact it flows from the right to identity enshrined in the World Human Rights Declaration 1948 to which India is a signatory.

- B. That in reply to ground C it is submitted that it is an established principle of law that the executive cannot act against the provisions of a law. However, in view of Article 73 and 162 of the Constitution of India, the respective Government is not debarred from exercising its executive power in the areas which are not regulated by specific legislation
- C. That in reply to ground D it is submitted that the UID scheme is not working under a legislative vacuum. Even though the Cabinet has recently approved a legislative framework to replace National Identification Authority of India (NIAI) Bill 2010, nevertheless, the Information Technology Act, 2000 and Rules made there under, i.e., The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, are sufficient enough to regulate the collection, disclosure, and use of sensitive personal data in the form of biometric data or

information. It is further denied that the UID scheme is making any invasion into fundamental rights.

D. In reply to ground E, it is submitted that if certain social welfare schemes have been seeking mandatory Aadhaar enrolment it is to make sure that the beneficiaries would be regularly getting benefits not only from one social welfare scheme but other such schemes as well. Once identified, the benefits will automatically come to them free from any middlemen or outside influence. It would bring regular benefits as envisaged in scheme(s) and thus improving the quality of life. However, for providing social security benefits and subsidies which are discretionary in nature there cannot be any lawful objection for the Government to insist on the use of Aadhaar to ensure the benefits reach only the entitled persons as also to plug wasteful and fraudulent leakages.

It is further submitted that the petitioners' have failed to articulate that how the issuance of the a random 12 Digit Aadhaar Number by the Unique Identification Authority of India, to the residents of India on a voluntary basis amounts to an invasion of the Right to Privacy guaranteed to the subject/s under Article 21 of the Constitution of India.

The utility of linking Aadhaar to welfare schemes is also recognised by the order of this Hon'ble Court dated 14.09.2011 in PUCL v Union of India WP(C) No. 161 of 2001. It is therefore humbly prayed that petitioners plea to resist linkage of Aadhaar to welfare schemes may be rejected.

E. That the contents of ground F are misconceived and misleading, and therefore vehemently denied. It is submitted that the Notification dated 4.11.2008 is not operational. The current success of Aadhaar, itself indicates that it is well within executive competence. It is also denied that UID is without any guidelines rules and procedures. The same have been extensively detailed in this counter affidavit and may be read as part of reply to this ground.

F. That the contents of ground G are misconceived and misleading, and therefore vehemently denied. There is no co-relation between Article 14 of the Constitution of India and assigning data collection to private agencies. Therefore the question of breach of Article 14 on this basis does not arise. It is further submitted that the petitioners' have failed to articulate that how the issuance of the a random 12 Digit Aadhaar Number by the Unique Identification Authority of India, to the residents of India on a voluntary basis amounts to contravention of Article 14 of the Constitution of India.

Data collection for enrolment by the private agencies does not private agencies does not provide them with any access whatsoever to the data collected due to encryption and security procedures put in place by the UIDAI.

G. That the contents of ground H are misconceived and misleading, and therefore vehemently denied. It is also denied that UID is without any guidelines rules and procedures. The same have been extensively detailed in this counter affidavit and may be read as part of reply to this ground. It is humbly submitted by **the answering respondent** that no power has been delegated to any private party to access or use data collected for purpose of delivery of Aadhaar the enrolment agencies which are private entity are closely supervised by Registrars which are Government or Public Sector Undertakings. The enrolment agencies have no flexibility to determine data fields against which data is to be collected which is entirely decided by the UIDAI and its Registrars. The software for enrolment on all devices is provided by the UIDAI and it does not allow collection of any additional data field other than those approved by the UIDAI . Encryption at source ensures that enrolment agency does not have any access to the data it collects. The level of encryption also ensures that even if the device containing the data is lost the data on it cannot be

decrypted and as such there is no possibility of data leakage by any private or public agencies.

It is further submitted that State Governments are creating respective 'Due Diligence Framework of UID Projects' to provide additional layers of privacy, data protection and cyber security to resident information.

H. That the contents of ground I are based on false assumptions and are hence misleading and therefore strongly denied. It is humbly submitted that even though the Government has recently approved a legislative framework to replace National Identification Authority of India (NIAI) Bill 2010, nevertheless, the Information Technology Act, 2000 and Rules made there under are sufficient enough to regulate the collection, disclosure, and use of sensitive personal data in the form of biometric data or information. The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 define "Biometrics" as:

".....the technologies that measure and analyse human body characteristics, such as 'fingerprints', 'eye retinas and irises', 'voice patterns', 'facial patterns', 'hand measurements' and 'DNA' for authentication purposes."

It is further submitted that the UIDAI biometric system design has followed global best practices. In designing UIDAI's biometric system, UIDAI reviewed existing state-of-the-art biometric systems, consulted with the world's top biometric experts, conducted a proof of concept study and built biometric system that is currently considered to be world's best. UIDAI has also regularly measured and published empirical and verifiable results.

It is submitted that the UIDAI has issued guidelines to its partners, agencies (Registrars, Enrolment Agencies), and others involved to ensure that resident data is kept secure, and confidential. In particular, these policies emphasize that:

- a Partners must collect the minimum data from residents,
- b. They must provide a justification to the resident for the collection and use of this data, and
- c. They must obtain a clear consent from the resident for the collection and use of this data.

It is further submitted that vendors do not have access to the data and all database are partitioned and fully protected. Raw biometric data is never stored unencrypted anywhere even within the data centres. Aadhaar system has used best in class encryption and

security mechanisms to ensure resident data and biometrics are never stolen or tampered with.

It is humbly submitted that the advantages of Aadhaar will be lost if there were to be no use of biometrics.

The UIDAI system does not facilitate cross referencing of services used by an individual by the State. Each user agency creates its own silo of information without any convergence/linkage at a central point.

I. That in response to ground J it is humbly submitted that the petitioners' have failed to articulate as to how the issuance of the a random 12 Digit Aadhaar Number by the Unique Identification Authority of India, to the residents of India on a voluntary basis amounts to an invasion of the Right to Privacy guaranteed to the subject/s under Article 21 of the Constitution of India. It has been clearly articulated in the above paras of this writ that even though the Government has recently approved a legislative framework to replace National Identification Authority of India (NIAI) Bill 2010, nevertheless, the Information Technology Act, 2000 and Rules made there under are sufficient enough to regulate the collection, disclosure, and use of sensitive personal data in the form of biometric data or

information. It is reiterated that UIDAI is not working in a legislative vacuum.

J. In response to the contents of ground K, it is humbly submitted that UID system acts as a facilitator as it facilitates end-to-end computerisation resulting in identification of an individual in the form of a random 12 digit unique number. Linking this 12 digit number to various social welfare schemes is the next logical and natural step and for which the State cannot be faulted as the objective and the scope behind every social welfare scheme is to make such scheme(s) more effective and efficient and to reach maximum number of people. The issue of biometrics has been dealt in detail in response to ground and may also be read in response to this ground.

K. That in response to ground L it is humbly submitted that the petitioners' have failed to articulate as to how the issuance of the a random 12 Digit Aadhaar Number by the Unique Identification Authority of India, to the residents of India on a voluntary basis amounts to an invasion of the 'Right to Privacy guaranteed to the subject/s under Article 21 of the Constitution of India. It has been clearly articulated in the above paras of this writ that even though the Government has recently approved a legislative framework to replace National

Identification Authority of India (NIAI) Bill 2010, nevertheless, the Information Technology Act, 2000 and Rules made there under are sufficient enough to regulate the collection, disclosure, and use of sensitive personal data in the form of biometric data or information. It is reiterated that UIDAI is not working in a legislative vacuum.

It would bring regular benefits, as envisaged in scheme(s) and thus improving the quality of life. However, for providing social security benefits and subsidies which are discretionary in nature there cannot be any lawful objection for the Government to insist on the use of Aadhaar to ensure the benefits reach only the entitled persons as also to plug wasteful and fraudulent leakages.

It is further submitted that the answering respondent is in the process of declaring its Central Repository and resident databases as 'Critical Information Infrastructure' as defined under section 70 [Protected System] of the IT Act to give UID system a statutory cover with respect to cyber security.

Para 35-41. That in response to paras 35-41, it is submitted that on the ground that some cases involve the same or substantial questions of law and that such questions are substantial questions of general public

importance, the respondent has moved a Transfer Petition (Civil) No. 47-48 of 2013 under Article 139-A(1) before this Hon'ble Court seeking transfer of (a) WP(C) No. 439 of 2012 titled S.Rajuvs Govt. of India &Ors. pending before the D.B. of the High Court of Judicature at Madras, (b) PIL No. 10 of 2012 titled VickramCrishna&Ors. Vs UIDAI &Ors.pending before, the High Court of Judicature at Bombay to be transferred before this Hon'ble Court and tagged with WP(C) No. 494 of 2012 titled as Justice K.S.Puttaswamy (Retd) &Anr. vs Union of India &Ors.

REPLY TO PRAYER CLAUSE:

That the prayer clause is misconceived, frivolous and misleading.

A. That in reply to prayer clause A, it is humbly submitted that in view of the contentions stated above, it is clear that the notification dated 28th January 2008 in no manner violates any fundamental rights of citizens of India, and is not in any manner illegal or unconstitutional. And therefore, there is no occasion for a writ, order or direction or any other writ, order of direction quashing the same.

B. – D. That the contents of prayer clause B to D are strongly denied as they are highly mischievous and intended to delay

the implementation of a project whose aim is to promote inclusion and benefit marginalized sections of society who have not formal proof of identity and hence experience difficulties in accessing various welfare schemes that are implemented by the Government of India and State Governments.

E. That in reply to prayer clause E, it is stated that under the facts and circumstances as detailed in this counter affidavit, there is no occasion to issue any ad interim relief in terms of prayer C and D, as it is only intended to delay implementation of a project whose aim is to promote inclusion and benefit marginalized sections of society.

F. That in reply to prayer clause F, it is stated that under the facts and circumstances as detailed in this counter affidavit, there is no occasion to issue any orders against the answering respondent.

PRAYER

In view of the above averments, contentions and legal position, it is most humbly submitted that this Hon'ble Court may be pleased to

- a) Dismiss this petition as frivolous, misleading and legally incorrect;

b) Pass any other or further order/s that this Hon'ble Court may deem fit under the facts and circumstances of the present case


DEPONENT

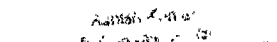
VERIFICATION

I, Ashish Kumar Singh as
Director General in the U.P. hereby
20th day of January 2019 that the
Preliminary objections are true and correct
knowledge derived from the official records and on the
basis of legal opinion received and believed to be
correct; and the last para is response to the
reliefs/prayers.


DEPONENT

Delhi

Date


of India

